

found to have a specified alcohol concentration, that are based on the employer's authority independent of this part. Any such additional policies or consequences shall be clearly and obviously described as being based on independent authority.

§ 654.73 Training for supervisors.

Every employer shall ensure that supervisors designated to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol testing under § 654.37 receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

§ 654.75 Referral, evaluation, and treatment.

(a) Each covered employee who has engaged in conduct prohibited by subpart B of this part shall be advised by the employer of the resources available to the employee in evaluating and resolving problems associated with the misuse of alcohol, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

(b) Each covered employee who engages in conduct prohibited under subpart B shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse.

(c)(1) Before a covered employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by subpart B of this part, the employee shall undergo a return to duty alcohol test with a result indicating an alcohol concentration of less than 0.02. In addition, the substance abuse professional may recommend that the employee be subject to a return to duty drug test, performed in accordance with 49 CFR part 40.

(2) In addition, each covered employee identified as needing assistance in resolving problems associated with alcohol misuse:

(i) Shall be evaluated by a substance abuse professional to determine that the employee has properly followed any

rehabilitation program prescribed under paragraph (b) of this section, and

(ii) Shall be subject to unannounced follow-up alcohol testing administered by the employer following the employee's return to duty. The number and frequency of such follow-up testing shall be as directed by the substance abuse professional, and consist of at least six tests in the first 12 months following the employee's return to duty. In addition, follow up testing may include testing for drugs, as directed by the substance abuse professional, to be performed in accordance with 49 CFR part 40. Follow-up testing shall not exceed 60 months from the date of the employee's return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

(d) Evaluation and rehabilitation may be provided by the employer, by a substance abuse professional under contract with the employer, or by a substance abuse professional not affiliated with the employer. The choice of substance abuse professional and assignment of costs shall be made in accordance with employer/employee agreements and employer policies.

(e) The employer shall ensure that a substance abuse professional who determines that a covered employee requires assistance in resolving problems with alcohol misuse does not refer the employee to the substance abuse professional's private practice from which the substance abuse professional receives remuneration or to a person or organization in which the substance abuse professional has a financial interest. This paragraph does not prohibit a substance abuse professional from referring an employee for assistance provided through—

(1) A public agency, such as a State, county, or municipality;

(2) The employer or a person under contract to provide treatment for alcohol problems on behalf of the employer;

(3) The sole source of therapeutically appropriate treatment under the employee's health insurance program; or